

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

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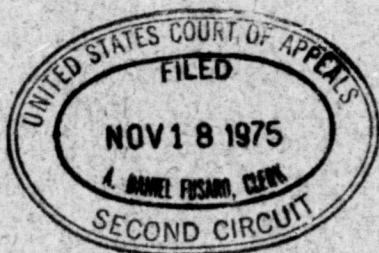
75-1341

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA : APPELLEE
V. :
STEVEN JOHN MURRAY : APPELLANT

Appeal from the United States District
Court for the District of Vermont

BRIEF FOR THE APPELLANT



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STATEMENT OF ISSUE

WHETHER THE DISTRICT COURT WAS IN ERROR IN
DENYING DEFENDANT MURRAY'S MOTION TO SUPPRESS
THE PROCEEDS OF TWO SEARCHES OF A VEHICLE OWNED
BY ONE JOSEPH GIBEAULT AND IN WHICH DEFENDANT
MURRAY WAS A PASSENGER AT THE TIME OF SUCH SEARCHES
ON JANUARY 21, 1975, IN MIDDLEBURY, VERMONT.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA : APPELLEE
V. :
STEVEN J. MURRAY : APPELLANT

BRIEF FOR THE APPELLANT

STATEMENT OF THE CASE

PRELIMINARY STATEMENT

Defendant Steven J. Murray appeals the written order of the United States District Court, the Honorable Albert W. Coffrin, United States District Judge, entered on June 20, 1975, and followed by an Opinion entered on June 25, 1975,

denying Defendant Murray's Motion to Suppress. The appeal is brought after Mr. Murray entered a plea of guilty to Count II in Docket No. Cr75-20 while reserving his right, with the consent of the Government and the Court, to file such an appeal.

STATEMENT OF FACTS

During the evening of January 21, 1975, the Defendants, Joseph Gibeault and Steven J. Murray, were riding in a Chevrolet van owned by Defendant Gibeault. Gibeault was operating the vehicle, and Defendant Murray was a guest, sitting in the front passenger seat. In the back of the van, there were three pillowcases which were in the joint possession of Gibeault and Murray. [TR 81]*. The pillowcases contained glassware and other objects taken according to the testimony at the suppression hearing, from two camps in Salisbury, Vermont, earlier that evening. There was also a silver wedding bell in the glove compartment which was also in the possession of both Murray and Gibeault and had been taken from the Nason home in Weybridge, Vermont, well before that evening.

When the Gibeault vehicle passed the Middlebury State

* TR refers to transcript of Suppression Hearing.

Police Barracks, Trooper Michael LeClair of the Vermont State Police heard what he thought to be a faulty muffler on the Gibeault vehicle. He then proceeded to follow the vehicle and noticed that it swerved left of the center of the highway. Trooper LeClair stopped the vehicle for a suspected DWI and defective muffler. As he approached the Gibeault vehicle, he shone his flashlight into the back of the van and saw three pillowcases which apparently contained some glassware. Mr. Gibeault was taken to Trooper LeClair's cruiser for questioning. He stated that the glassware was given to him by his father as junk to be thrown away. Trooper LeClair then returned to the Gibeault vehicle and informed Mr. Murray that he was to be detained for further investigation of possible involvement in the theft of glassware in the pillowcases. [TR 21]. Murray was then frisked. Trooper LeClair felt a hard object in Murray's coat pocket, reached into his pocket, and seized a drug pipe containing a small residue of marijuana. Murray was then arrested for possession of marijuana. [TR 14-18, 20-22, 76].

Trooper LeClair called Officer James Coons of the Middlebury Police Department for assistance. Trooper LeClair asked Gibeault if he could search the vehicle, and Gibeault tentatively agreed. As Trooper LeClair and Officer Coons began to open the back doors of the van, Gibeault demanded that they not

search without a warrant. [TR 20]. It is undisputed that the officers did not have a warrant, and the District Court found that consent to search was not given by Gibeault. Nevertheless, Trooper LeClair and Officer Coons continued to open the rear door of the van and inspected the contents of the pillowcases. [TR 31]. They then closed the rear doors, leaving the pillowcases and their contents in the Gibeault vehicle. Trooper LeClair decided to detain Murray and Gibeault primarily to check out Defendant Gibeault's story with his father. [TR 40-41]. Both individuals and the van were taken to the Vermont State Police Barracks in Middlebury. [TR 23].

The Gibeault van was parked outside of the State Police Barracks, and later moved into the Barracks garage. Defendants Murray and Gibeault were taken into the Vermont State Police Barracks while Trooper LeClair called Defendant Gibeault's father to confirm Mr. Gibeault's story. Trooper LeClair testified that Murray and Gibeault would have been released if Gibeault's father had supported his story. [TR 42]. However, Gibeault's father denied having given Gibeault any glassware. Trooper LeClair then ordered the van to be searched and the property to be inventoried. The police searched the van without either a warrant or Gibeault's consent. [TR 35].

The Gibeault van was continually within police custody from the time that it was taken to the Vermont State Police Barracks through the search. Trooper LeClair had no indication that other persons knew that the van was outside of the Barracks. [TR 34]. There was no indication that the Defendants had telephoned anyone since being taken into police custody. [TR 45].

A silver wedding bell taken from the Nason burglary was found in the glove compartment. Trooper LeClair confronted Gibeault with the bell together with a picture of the bell which had been given to him by its owners. After discovering that the police had found the bell, Gibeault agreed to give a statement implicating himself and Murray in four burglaries, the proceeds from which were in the pillowcases. [TR 26-29, 36, 77-78]. At no time did Defendant Murray make any statements concerning his involvement in any of these offenses.

During the next two days, Gibeault gave further statements concerning his and Defendant Murray's involvement in other breaking and enterings. [TR 78-80]. Included within those statements were descriptions of two breaking and enterings into the Bridport and Shoreham, Vermont, Post Offices. [TR 63]. Those burglaries were the subject of the instant charges. Defendant Gibeault also assisted State and Federal agents in locating postal equipment that was taken from those post offices.

Defendants Murray and Gibeault filed motions to suppress the statements made by Defendant Gibeault concerning the Bridport and Shoreham post office burglaries, together with the property taken from those post offices that was recovered through the assistance of Defendant Gibeault. On June 20, 1975, Judge Albert W. Coffrin, United States District Judge, District of Vermont, denied Defendants Murray and Gibeault's motions to suppress, explaining reasons for such denial in an opinion entered on June 25, 1975.

On July 21, 1975, Steven John Murray entered a plea of guilty to Count I in Docket No. Cr75-20. The plea was entered with the agreement of the United States Attorney and the Court to permit Mr. Murray to enter an appeal from the District Court's order denying his motion to suppress. On September 15, 1975, Mr. Murray received a three year sentence, all of which was suspended except for six months. After completion of the six-month period, Mr. Murray was to be placed on probation. Mr. Murray filed a notice of appeal on September 24, 1975.

ARGUMENT:

POINT I: DEFENDANT MURRAY HAS STANDING TO RAISE A FOURTH AMENDMENT OBJECTION TO SEARCH OF THE GIBEAULT VEHICLE.

Before an accused can be heard to claim violation of a

constitutional protection, it must be shown that "he belongs to the class for whose sake the constitutional protection is given". Hatch v. Reardon, 204 U.S. 152, 160. To qualify as a member of the class that has standing to object to unreasonable searches and seizures, an accused must claim either (1) an interest in the premises searched, or (2) an interest in the property seized. Jones v. United States, 362 U.S. 257 (1960).

Defendant Murray bases his claim for standing upon the testimony of Defendant Gibeault that Murray was a guest in his vehicle. The Jones case defines the possessory interest in premises sufficient to justify standing in search and seizure cases:

...[A]nyone legitimately on premises where a search occurs may challenge its illegality... when its fruits are proposed to be used against him.

The Jones case extended the right to challenge searches and seizures to legitimate invitees and guests if the fruits of the search are to be used against them. The District Court found by implication that Defendant Murray was a guest in the Gibeault vehicle and that the property seized was used against him, thereby granting Murray standing to raise the Fourth Amendment issue. Defendant Murray argues that, as to the issue of standing, the District Court was correct.

POINT II: THE SEARCH OF THE GIBEAULT VEHICLE WHILE AT THE SCENE OF THE STOPPING WAS MADE WITHOUT A WARRANT, NOR COULD IT BE SUPPORTED BY A FINDING OF PROBABLE CAUSE.

The Fourth Amendment requires as a general principle that searches be conducted only pursuant to judicially issued search warrants. Trupiano v. U. S., 334 U.S. 699 (1948); Terry v. Ohio, 392 U.S. 1 (1968). With that as a general principle, the Courts have fashioned a number of exceptions. The relevant exception for the search at the stopping of the Gibeault van relates specifically to vehicular searches.

The vehicle search exception to the warrant requirement was first stated in Carroll v. U.S., 267 U.S. 132 (1925), a case which permitted warrantless searches of movable vehicles when the officer had probable cause to believe that a crime had been committed and property subject to seizure was within the vehicle. The best definition of probable cause is found in Brinegar v. U.S., 338 U.S. 160 (1949):

Probable cause exists where the facts and circumstances within their (the officers) knowledge and, of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.

Two factors are considered in determining whether probable cause to search existed: (1) the information within the officer's knowledge, and (2) the trustworthiness of that information.

The District Court found that Trooper LeClair did have probable cause to believe that an offense had been committed because of his knowledge of the following factors: (1) that Murray and Gibeault were under investigation for several burglaries in the Middlebury area; (2) that Murray and Gibeault had criminal records; (3) that a green van had been seen near one of the homes that was burglarized; (4) that pillowcases were used in a number of area burglaries; and (5) that an informant had advised LeClair that Murray and Gibeault were in possession of glassware.

Mr. Murray does not argue that Trooper LeClair did not have the information that was the basis of the Court's Opinion. Rather at issue is the second aspect of the Brinegar definition of probable cause, that is, the trustworthiness of that information.

In its Opinion, the District Court declined to consider information by an informant. Its decision not to consider the informant's tip was based upon arguments made by the Defense that the informant was not proven to be reliable, nor his information trustworthy. Spinelli v. U.S., 393 U.S. 140 (1969); Aguilar v. Texas, 378 U.S. 108 (1964); U. S. v. Harris, 403 U.S. 573 (1971). Without considering such information, the Court could only base its findings upon the criminal records of the defendants, upon the presence of

pillowcases in the vehicle together with knowledge that pillowcases had been used in other burglaries, and upon the fact that a green van was near the scene of an earlier burglary.

In Spinelli v. U.S., supra, the U. S. Supreme Court addressed the point of whether reputation of an accused could support a finding of probable cause.

[T]he allegation that Spinelli was "known" to the affiant and to other federal law enforcement officers as a gambler and an associate of gamblers is but a bold and unilluminating assertion of suspicion that is entitled to no weight in appraising the magistrate's decision.

Spinelli v. U.S., supra, at 414.

In Spinelli, the Court not only declared that reputation of an accused for becoming involved in criminal activity could not support a finding of probable cause, but that it could not even be considered as one factor in such a finding.¹

Next, the pillowcases within the Gibeault vehicle were of themselves no evidence of criminal activities. Neither the glassware nor the pillowcases could be considered

1. "It is clear from Spinelli v. United States,...that the probable cause cannot be based on facts which are totally innocent in themselves, nor is the fact that the suspect has previously engaged in similar criminal behavior of value in determining probable cause." Cooke, Constitutional Rights of the Accused, p. 221.

contraband in themselves. Again, in Spinelli v. United States, supra, the U. S. Supreme Court implied that probable cause may not be based upon facts which are totally innocent² in themselves.

Finally, it was apparent to Trooper LeClair that, at the time of the first search, he did not have probable cause. He decided not to seize the pillowcases at the scene of the stopping. Rather, he decided to verify Gibeault's story before conducting a full search. In the suppression hearing, LeClair testified:

"If his father had, in fact, given me that type of description, I would have released [Gibeault] and his property.

[TR 42]

It was not until Gibeault's father failed to verify Gibeault's story did LeClair believe that he had probable cause to search.

Defendant Murray concurs with Trooper LeClair's first assessment of the facts, that is, that probable cause arose only after LeClair's conversation with Defendant Gibeault's father. As a result, the search at the scene of the stop was not supported by probable cause.

2. See footnote #1.

POINT III: THE WARRANTLESS SEARCH OF THE GIBEAULT VEHICLE AT THE VERMONT STATE POLICE BARRACKS COULD NOT BE SUPPORTED BY THE AUTOMOBILE EXCEPTION TO THE WARRANT REQUIREMENT, WHETHER OR NOT PROBABLE CAUSE TO SEARCH AT THE SCENE OF THE STOPPING OF THE VEHICLE EXISTED.

The U. S. Supreme Court has repeatedly held that, if probable cause does not exist at the scene of the stop, a subsequent search of the vehicle after it had been taken to the stationhouse would be invalid. Preston v. U.S., 376 U.S. 216 (1964); Coolidge v. New Hampshire, 403 U.S. 443. If probable cause did not exist to search the Gibeault vehicle at the scene of the stop, the subsequent search at the State Police Barracks would be invalid.

If probable cause to search the Gibeault van did exist at the scene of the stop, the question remains whether the stationhouse search would therefore be valid. The District Court apparently relied upon Chambers v. Maroney, 399 U.S. 42 (1970) in supporting the stationhouse search. In Chambers, four individuals were stopped in their vehicle and arrested for a service station robbery. Probable cause to search and to seize the vehicle as evidence existed at the stop. However, the police took the individuals immediately to the stationhouse and conducted a search of the vehicle, which resulted in the recovery of items introduced at their trial. The U. S. Supreme Court upheld the search, holding that, where probable cause to search a vehicle at the scene exists, police are justified in postponing the search until the

vehicle is taken to the stationhouse.

The Chambers opinion was based upon the assumption that the police had the authority to seize the vehicle at the scene of the stop as potential evidence. Based upon that assumption, the Court found that an immediate search at the stationhouse would not be a greater intrusion upon Fourth Amendment rights than holding a vehicle until a warrant could be obtained. Chambers v. Maroney, supra, at pp. 51-52. In addition, the Court in Chambers expressed that its holding did not mean that warrants would never be required for a valid vehicle search, and that the mobility factor and the practicability of obtaining a warrant still must be considered in determining whether a warrant is required.

The case at bar presents facts significantly different from the Chambers case. First, there was insufficient evidence to physically seize the vehicle at the scene as a piece of evidence. More importantly, unlike Chambers, the Gibeault vehicle was not taken to the stationhouse to be searched. It was Trooper LeClair's intention to check out Gibeault's story. Only if and when his story was not confirmed did the police intend to search the van. The decision to search the Gibeault van was made only after it was in police custody at the stationhouse.

Defendant Murray contends that, unlike the situation

in Chambers, the stationhouse search was separate and distinct from the earlier search at the scene. As such, the validity of the stationhouse search depends upon whether that search comes under the automobile exception to the warrant requirement.

The automobile exception has been justified upon the mobility factor of a vehicle. The Court in Carroll v. U.S., 267 U.S. 132 (1925), found:

a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile for contraband goods where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Carroll v. U.S., supra, at p. 153.

In essence, the exigent circumstances necessary to waive the requirement of a warrant is supplied in automobile searches by the mobility of vehicles.

If the stationhouse search is separate and distinct from the earlier search, it is clear that exigent circumstances are not present. The vehicle lost its mobility when taken to the State Police Barracks. The police knew that no other individuals knew where the Gibeault van was. Further, Gibeault and Murray were in custody for unrelated offenses.

Without such mobility, it is incumbent upon the police to obtain a warrant. Preston v. U. S., supra.

The District Court implied that Cardwell v. Lewis, 417 U.S. 583 (1974) eliminates the necessity of the exigent circumstances to the exceptions to warrant requirement. The facts in Cardwell are vastly distinguishable, since that case deals only with the search of the exterior of a vehicle and thereby infringing upon the accused's privacy rights to a much lesser degree. Further, nowhere in the plurality opinion in Cardwell did the Court discuss rejecting the exigent circumstances requirement. In fact, the Court justified seizure of the vehicle on exigent circumstances grounds, that is, that the vehicle was in a public parking lot and therefore mobile. The presence of exigent circumstances remains a vital factor in justifying warrantless searches.

CONCLUSION

Defendant Murray contends that Trooper LeClair did not have probable cause to search the Gibeault van at the scene of the stop. Realizing this, LeClair transported the vehicle to the stationhouse on the speculation that Gibeault's statement could not be confirmed by his father. Probable cause arose only after Gibeault's father denied his story. With the van then in police custody and with no threat that it

would be removed, it was then incumbent upon the police to obtain a warrant. Their subsequent warrantless search was therefore invalid.

Defendant Murray further argues that, even if probable cause to search existed at the scene, the stationhouse search could not be supported by the automobile exception to the warrant requirement. The stationhouse search was separate from the earlier search and must meet the requirements of the automobile exception. Since the vehicle lost its mobility while at the stationhouse, the automobile exception does not apply, and the warrantless search is therefore invalid.

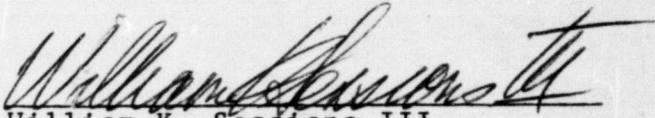
Dated at Middlebury, Vermont, this 17th day of
November, 1975.

STEVEN JOHN MURRAY

by 
William K. Sessions III

CERTIFICATE OF SERVICE

I, WILLIAM K. SESSIONS III, ESQ., Attorney for the Appellant, hereby certify that on the 17th day of November, 1975, I served the foregoing BRIEF FOR THE APPELLANT AND APPENDIX FOR THE APPELLANT by first-class mail, postage prepaid, to Jerome F. O'Neill, Esq., Assistant United States Attorney for the District of Vermont, Courthouse Building, Rutland, Vermont, a conformed copy thereof.


William K. Sessions III